

1 The Honorable Marsha J. Pechman  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

9 JULIE DALESSIO, an individual,  
10 Plaintiff,

11 v.  
12

13 UNIVERSITY OF WASHINGTON, a  
14 Washington Public Corporation; ELIZA  
15 SAUNDERS, Director of the Office of  
16 Public Records, in her personal and official  
capacity; ALISON SWENSON, Compliance  
Analyst, in her personal capacity; PERRY  
TAPPER, Public Records Compliance  
Officer, in his personal capacity; ANDREW  
PALMER, Compliance Analyst, in his  
personal capacity; JOHN or JANES DOES  
1-12, in his or her personal capacity,

17 Defendants.  
18

No. 2:17-cv-00642-MJP

19 DECLARATION OF  
20 JAYNE L. FREEMAN IN SUPPORT  
21 OF DEFENDANTS' RESPONSE TO  
22 PLAINTIFF'S MOTION TO COMPEL  
23 INITIAL DISCLOSURES

24 I, Jayne L. Freeman, declare as follows:

25 1. I am a Special Assistant Attorney General appointed to defend Defendants in  
26 this lawsuit. I make this declaration based upon my own personal knowledge, upon facts  
27 which are admissible in evidence. I am competent to testify to the matters set forth in this  
declaration.

2. Attached as **Ex. A** is a true & correct copy of email correspondence between  
my office and Mr. Thomas on February 28, 2018.

3. Attached as **Ex. B** is a true & correct copy of email correspondence between  
my office and Mr. Thomas April 6-10, 2018 confirming Mr. Thomas received duplicate  
copies of all documents that the University had produced to Ms. Dalessio thus far

1 (UW00001-003004).

2       4. Attached as **Ex. C** is a true & correct copy of email correspondence between  
3 my office and Mr. Thomas April 11-12, 2018 explaining where discovery documents are  
4 located.

5       5. Attached as **Ex. D** is a true & correct copy of email correspondence between  
6 my office and Mr. Thomas June 18-20, 2018 again explaining information provided in  
7 Defendants' Supplemental Initial Disclosures.

8       6. Attached as **Ex. E** is a true & correct copy of email correspondence between  
9 my office and Mr. Thomas May 18-July 12, 2018 again explaining information provided in  
10 Defendants' Supplemental Initial Disclosures following a "discovery conference" on June  
11 25, 2018 and a follow-up email from Mr. Thomas on July 12, 2018 (this is a complete set of  
12 the email exchange filed by Plaintiff at Dkt. 109-4, which did not include my July 12, 2018  
13 response)

14       7. Attached as **Ex. F** is a true & correct copy of email correspondence between  
15 my office and Mr. Thomas August 8, 2018. Plaintiff filed Mr. Thomas' August 8<sup>th</sup> email  
16 (Dkt. 109-5) alleging the "supplemental discovery sent on August 6, 2018 is simply  
17 unacceptable" and accusing defense counsel of "wasting his time" "as Ms. Dalessio's pro  
18 bono attorney". However, he did not include Mr. Chen's response that day clearly  
19 explaining that Mr. Thomas was wrong: the University *had* included clear labels as to each  
20 response that was a "**SUPPLEMENTAL RESPONSE**" so they would be clearly  
21 identifiable. Additionally, the University had clearly identified, by UW Bates-number  
22 which produced documents were responsive to which requests. It again appeared  
23 Mr. Thomas must simply not be reading documents that were served on him.

24       8. Attached as **Ex. G** is a true & correct copy of email correspondence between  
25 my office and Mr. Thomas September 13-20, 2018 wherein Mr. Thomas again accused the  
26 University of failing to produce documents that had already been identified and produced.  
27 It was again difficult to understand why Mr. Thomas would *still* represent that the

1 University had not produced items like 1) job descriptions, 2) policies, and 3) information  
2 describing where documents produced in response to PRA requests were found at the  
3 University and which employees were involved in locating them.

4 9. Attached as **Ex. H** is a true & correct copy of email correspondence between  
5 my office and Plaintiff regarding Defendants' Objections and First Supplemental Responses  
6 to Plaintiff's First Set of Discovery Requests.

7 10. Attached as **Ex. I** is a true & correct copy of email correspondence between  
8 my office and Plaintiff regarding Defendants' Second Supplemental Initial Disclosures.

9 11. Attached as **Ex. J** is a true & correct copy of email correspondence from Joe  
10 Thomas serving Defendants with a second set of discovery requests after specifically  
11 requesting Defendants not file a motion for summary judgment that I informed Mr. Thomas  
12 we intended to file. Despite Mr. Thomas' actions, my office has kept our word and has not  
13 filed our motion.

14 12. Attached as **Ex. K** is a true and correct copy of a September 12, 2018 email  
15 Mr. Thomas sent to my office outlining what he deemed to be insufficiencies in  
16 Defendants' responses to Plaintiff's 2018 discovery requests.

17 13. Attached as **Ex. L** is a true and correct copy of Defendants Objections and  
18 First Supplemental Responses to Plaintiff's First Set of Discovery Requests and a separate  
19 privilege log.

20 **Mr. Thomas' Filing Motions and Discovery During Period He Claimed to Be  
Unavailable to Participate in Litigation.**

21 14. On September 17, 2018, I participated in a discovery conference with  
22 Mr. Thomas. Associate attorney Derek C. Chen from my office also participated. During  
23 the conference, we reminded Mr. Thomas that Defendants still intended to refile a new  
24 Motion for Summary Judgment (*see*, Dkt. 90, p. 2), particularly in light of the immunities  
25 that apply to the individual Defendants. He told us that we should know he was going to be  
26 gone for a lengthy period of time because he had listed September 20 – November 16, 2018  
27 (two months) as dates that he would have a trial conflict in the JSR filed February 20, 2018

1 (in addition to three weeks in April, and three weeks in June/July 2018) [Dkt. 69]. When I  
 2 pointed out he had never filed any Notices of Unavailability and that it was difficult if he  
 3 was going to again tie the case up for months, he clarified that he was now only unavailable  
 4 for one month: September 20 – October 16, 2018. Then he filed a Notice of Unavailability  
 5 for those dates [Dkt. 105]. At his request, we agreed not to file a Motion for Summary  
 6 Judgment until he returned to the office.

7 15. We had a final discovery conference on September 20, 2018 discussing  
 8 Defendants' Supplemental responses to Plaintiff's discovery requests before he left town.

9 16. On September 21, 2018, the Court granted Defendants' motion to amend  
 10 their Answer [Dkt. 106] and an amended Answer was filed [Dkt. 107].

11 17. Then, on September 27, 2018, Mr. Thomas filed this Motion to Compel  
 12 Initial Disclosures, along with declarations and supporting exhibits [Dkt. 108, 109,  
 13 and 110].

14 **History of Defendants Initial Disclosures and Responses to Plaintiffs' Discovery  
 Requests.**

15 18. As has been detailed in prior motions, declarations, and court orders, the  
 16 University has provided documents, information, and discovery responses to Plaintiff  
 17 repeatedly over the past 1½ years:

- 19 • **June 1, 2017:** Initial Disclosures to Plaintiff Julie Dalessio, pro se  
 (Dkt. 108-1). Listed 11 individuals, listed and unilaterally produced  
 Documents UW00001-UW001988.
- 21 • **July 6, 2017:** Defendant University of Washington responded to  
 Ms. Dalessio's First Set of Interrogatories and Requests for Production  
 served June 6, 2017.
- 23 • **August 14, 2017:** Defendant University of Washington responded to  
 Ms. Dalessio's Second Set of Interrogatories and Requests for Production  
 served July 14, 2017, producing documents UW001989-UW003004 to  
 Plaintiff Julie Dalessio, pro se.
- 25 • **August 24, 2017:** Defendant University of Washington filed a Motion for  
 Summary Judgment (Dkt. No. 27), supported by Declarations of Andrew  
 Palmer (Dkt. 29), Alison Swenson (Dkt. 30, 32-34).

- **October 2017-January 2018:** Plaintiff served & Defendant University of Washington responded with objections and responses to Plaintiff's Third, Fourth, and Fifth discovery requests, and Plaintiff filed Motions to Compel Discovery (Dkt. Nos. 52, 59), and a second Motion to Appoint Counsel (Dkt. 61-62). The Court then appointed Joe Thomas as counsel for Plaintiff.

After Mr. Thomas appeared as counsel for Ms. Dalessio (Dkt. No. 67, 68):

- **April 12, 2018:** Plaintiff filed Amended Complaint (Dkt. No. 82) adding 16 individual Defendants. Thereafter, Plaintiff agreed to issue new discovery requests, and Defendants agreed to strike the pending summary judgment motion subject to re-filing to more directly address the claims/parties in Plaintiff's Amended Complaint (Dkt. No. 90). Defendants also did not oppose Plaintiffs repeated requests to extend previously set discovery deadlines, and the court had extended the deadlines several times (Dkt. No. 73, 91, 94, 96).
- **April 30, 2018:** Freeman letter to Thomas re: status of discovery
- **May 18, 2018:** Defendants' Supplemental Initial Disclosures produced (after Plaintiff filed Amended Complaint alleging same claims against individual Defendants). Listed 23 individuals and specific relation to any documents including referencing Bates'-numbered documents, listed documents UW00003-UW003004 previously produced in June/August 2017 and identifying each individual who appeared related to sets of documents. Dkt. 108-2, 108-3.
- **June 25, 2018:** DISCOVERY CONFERENCE RE: INITIAL DISCLOSURES.
- **July 6, 2018:** Defendants responded to Plaintiff's "First" discovery requests (not including Ms. Dalessio's pro se requests), producing additional University documents UW003005-UW 004154 requested by Plaintiff. These responses included requested training materials (UW4155-4165) and job descriptions (UW004166-UW004180).
- **July 30, 2018:** Second Supplemental Initial Disclosures. Dkt. 108-5. Defendants produced documents UW004452-UW004454 consisting solely of additional documentation Plaintiff requested to prove the University really had agreed to defend and indemnify the individually-named Defendants pursuant to its statutory self-insurance program. Added Last-known home addresses for several current and former University employees.
- **July 30, 2018:** Defendant produced documents UW004452-UW004454 in response to Mr. Thomas' request for copies of indemnification letters, statutes and Board of Regents Standing Order as evidence of "insurance" in Initial Disclosures.

- 1     • **August 6, 2018:** Produced Defendants' First Supplemental Responses to  
2 Plaintiff's First Interrogatories and Requests for Production, including a  
3 copy of UW004462-UW004467 (APS 57.9 department guidelines re: release  
4 of UW records) pursuant to request of Plaintiff's counsel (also available on  
5 UW website).
- 6     • **AUGUST 23, 2018:** DISCOVERY CONFERENCE RE: Plaintiffs' allegations that Defendants' discovery responses were inadequate. Without  
7 any evidence or support for his position, Mr. Thomas argued it was his belief  
8 that an adequate search had not been done for records. I discussed again  
9 with him the efforts that were made, which he would not accept.
- 10    • **SEPTEMBER 17, 2018:** DISCOVERY CONFERENCE RE: Defendants' Supplemental responses to Plaintiff's discovery requests
- 11    • **SEPTEMBER 20, 2018:** DISCOVERY CONFERENCE RE: Defendants' Supplemental responses to Plaintiff's discovery requests

12                    **Discovery Conferences with Mr. Thomas**

13    19. I have had multiple telephone discovery conferences with Mr. Thomas.

14    20. For example, on June 25, 2018, Mr. Thomas again stated (as reflected in his  
15 June 13, 2018, email, *Exh. E*, at p. 7), that the **University had not disclosed the “subjects**  
16 **of information” related to individuals identified in Defendants’** May 18, 2018  
17 Supplemental Initial Disclosures. He said he did not want to go on a “fishing expedition”  
18 regarding the last-known home addresses of all former UW employees, but that he mainly  
19 wanted to “find out where these documents were located and who had control of them.” I  
20 asked if he had actually *read* the Initial Disclosures because this very detailed information  
21 had been provided, and I gave the example of the “Lab Medicine Department file” and the  
22 information provided tracking where it had been located and produced in response to the  
23 2015 and 2016 PRA requests. Mr. Thomas asked me “where is that information in the  
24 Initial Disclosures?” I then directed him to p. 6 of Dkt. 108-3 and told him that, for  
25 example, this is the information the University provided regarding the Lab Medicine file,  
26 and I read, verbatim, the following passage out loud from p. 6:  
27

18. *Matt Maria*

*Former Program Coordinator, Laboratory Medicine (July 2013-December 2016)*

### *Address Unknown*

Records reflect former employee Matt Maria requested a box from Records Management Services archives (#43135) on or about September 21-22, 2015 that contained Plaintiff's department file from Laboratory Medicine in response to PRR-2015-00570. The box was returned to archives on or about October 18, 2016. Records Management Services records reflect box #43135 contained "Personnel Records Terms, A-F, Year 2003". UW002966- UW002995.

Records reflect Mr. Maria also requested box #43135 from Records Management Services archives (#43135) on or about December 5, 2016, that the box was checked out of archives December 12, 2016 for delivery and returned to archives December 15, 2016. UW002966- UW002995.

Records reflect that Mr. Maria may have originally sent the department files located in box #3 ("personnel records Terms A-F 2003") from the Lab Medicine Department to Records Management Storage in 2005. UW002960-UW002964.

(Emphasis added.)

21. I asked Mr. Thomas if he had ever actually read the Initial Disclosures before asserting they were insufficient, and told me I was “cherry-picking” information, that there was supposed to be an “HR file,” too, and that we had not provided any information about that.

22. I again told him we *had* provided that information, and asked him to turn to page 6 of Dkt. 108-3 (right above Mr. Maria's entry), and read aloud the following passage:

17. Paola M. Quinones

*Former Assistant to the Vice President (August 2014-February 2017)*

### *Address Unknown*

On October 9, 2015, Ms. Quinones forwarded records responsive to PRR-2015-570 from **Campus Human Resources** to Ms. Swenson in the public records office. On October 14, 2015, Ms. Quinones forwarded documents responsive PRR-2015-570 located in the **Benefits Office** to Ms. Swenson in Public Records. On October 21, 2015, Ms. Quinones forwarded a document received from the **DSO**

1 *office responsive PRR-2015-570 to Ms. Swenson in public*  
 2 *records. See, UW002001-UW002011.*

3 *On December 6, 2016, Ms. Quinones forwarded records*  
 4 *responsive to PR-2016-00760 to public records analyst*  
 5 *Andrew Palmer. On December 20, 2016, Ms. Quinones*  
 6 *reported to Mr. Palmer that DSO did not have documents*  
 7 *responsive to the request. UW002415-UW002420.*

8 *On April 27, 2017, Ms. Quinones reported to public records*  
 9 *staff that the Campus Human Resources Office did not locate*  
 10 *any records responsive to PRR-16-00283. UW001996-*  
 11 *UW001998*

12 (Emphasis added.)

13 23. Mr. Thomas responded, “Thank you for clarifying that,” and said he guessed  
 14 he didn’t understand it and that helped him understand the information better. I asked what  
 15 had been clarified, and pointed out he had the information all along, and I was confused as  
 16 to why he kept sending emails saying that the information had never been provided.

17 24. I told him I really was trying to understand the purpose of the “discovery  
 18 conference” when I did no more than read out loud the page information he has had in his  
 19 possession all along, and I was really trying to understand what additional information he  
 20 felt Defendants needed to provide. He then said he had been “asking for this stuff since his  
 21 email on May 18<sup>th</sup>” and that I refused to answer his questions. When I reiterated that he had  
 22 *had* the information all along, but it seemed he just wasn’t reading it. He responded that I  
 23 had not specifically written about Maria and Quinones in my email to him the prior week  
 24 (instead I had given a detailed example of documents located by Karen Sullivan as an  
 25 example of explaining where we had provided all this information he sought).

26 25. When I asked Mr. Thomas if there was anything else we needed to discuss,  
 27 he simply responded “I don’t like your tone, you are making money off me right now.” He  
 28 said this 1-2 more times when I asked if there was anything else that needed to be addressed  
 29 regarding discovery. I finally confirmed whether we were done, and we ended the  
 30 conversation.

31 26. In emails regarding his perception of Initial Disclosures and discovery, Mr.  
 32 Thomas routinely alleges that defense counsel is “ambushing him” as “pro bono counsel,”

1 and say we are “question[ing] his professionalism and ethics” when Defendants are trying  
 2 to understand the source of Mr. Thomas’ confusion. *See, e.g. Exh. E*, at p. 5. Yet, during  
 3 the telephonic discovery conferences on August 23 and September 17, 2018, he expressly  
 4 told me and Mr. Chen that he is not saying and does not think that we, as attorneys, are not  
 5 doing our job or have done anything wrong; he indicated he thinks either we are getting  
 6 “bad information” from the client or are mistaken.

7 27. Upon receiving appointment to defend the University in this lawsuit, my  
 8 office obtained copies of documents related to the public records requests at issue and  
 9 produced them to Ms. Dalessio on June 1, 2017. The names listed in this first set of Initial  
 10 Disclosures included names I saw reflected on the Case Summary documents reflecting the  
 11 OPR’s process for responding to those requests, including Barb Benson, Lori Oliver, Mindy  
 12 Kornberg, and Cynthia Dold. Dkt. 10-1, p. 1-5. (see, e.g. Dkt. 30-7 (Case Summary Report  
 13 for PR-2015-570, p. 4; Dkt. 108-6, p. 2,)).

14 28. Upon further research in the course of responding to Plaintiff’s ensuing  
 15 discovery requests, I learned that, while these individuals were the head of the Departments  
 16 to which various requests to search for potentially responsive documents were addressed,  
 17 they were not actually the individuals who *processed* the requests, including locating and  
 18 producing documents to OPR for production. Rather, other staff in the Department or  
 19 throughout the University actually administered this process. When we obtained copies of  
 20 the transmittal emails detailing the search and production of documents from OPR to  
 21 various Departments throughout the UW (Central Campus HR, Lab Medicine, Health  
 22 Sciences, UW Medicine, Disability Services, etc.), we produced copies of those emails and  
 23 disclosed additional names of UW staff that appeared to have been more directly involved  
 24 in the search & transmittal of documents responsive to PRA-2015-570 (Betz) (documents  
 25 UW002001-UW002031) and PRA-2016-760 (Dalessio)(documents UW002032-2952).  
 26 *See, Dkt. 108-3, and Ex. E, at p. 13.*

27

1       29. I explained this to Mr. Thomas in writing in telephone conferences the  
 2 process the University went through to locate documents responsive to discovery and  
 3 disclosed as Defendants' Initial Disclosures. I explained to him in one of the conferences in  
 4 September of 2018 that, if what he was concerned that some names on the June 1, 2017  
 5 Initial Disclosures no longer appeared on the 2018 Supplemental Initial Disclosures, this  
 6 was the explanation for it—as we can now both see reflected on the transmittal emails  
 7 which UW staff actually handled the searches and documents (and Ms. Dalessio has had  
 8 this information since August 2017). I gave Mr. Thomas the example of **Mindy Kornberg**,  
 9 a Vice President for the University whose name appeared on one of the case summaries  
 10 (Dkt. 30-7 (Case Summary Report for PR-2015-570, p. 4), and explained I had listed her  
 11 name in 2017 as potentially an individual with information based on her name appearing on  
 12 the case summary report that I initially received. However, upon receiving additional,  
 13 underlying transmittal emails from UW, I revised the information produced to Ms. Dalessio  
 14 in discovery and later in the Supplemental Initial Disclosures to reflect the names of staff  
 15 who were actually directly involved in searching for and transmitting documents.

16       **Sufficiency of Initial Disclosures Pursuant to FRCP 26(a)(1): Insurance  
 Coverage**

17       30. In the University's June 1, 2017 Initial Disclosures, Defendant provided the  
 18 following information pursuant to FRCP 26(a)(1):

19       ***III. COVERAGE***

20       *The University of Washington and its employees, agents, and  
 21 students are covered*

22       *for liabilities arising from negligent acts and or omissions  
 23 committed in the course and*

24       *scope of their University duties. This coverage is provided  
 25 through a self-funded program*

26       *established pursuant to RCW 28B20.250 et seq., and  
 27 governed by the Standing Orders of*

28       *the Board of Regents. The liability program provides  
 29 unlimited coverage, operates on an occurrence basis, and  
 30 applies at all approved sites of practice or education.*

1 Dkt. 108-1, p. 5.

2 31. On June 25, 2018, I had a “discovery conference” with Mr. Thomas wherein  
 3 I spent a good deal of time trying to explain to him that the University of Washington is a  
 4 self-insured state agency, a program governed by statute and that there were no “insurance  
 5 policies” that applied. He refused to accept this and continues to insist that some private  
 6 insurance policy be produced. I have handled cases for the University of Washington for  
 7 many years, and this is the standard response included in most Initial Disclosures unless a  
 8 situation arises where an outside policy may come into play for some reason. Here it does  
 9 not.

10 32. On July 30, 2018, following several assertions by Mr. Thomas that this  
 11 information was “insufficient” to comply with FRCP 26(a)(1), the University provided the  
 12 following additional information in the form of Supplemental Initial Disclosures:

13 **IV. RULE 26(A)(1)(A)(IV) FOR INSPECTION AND  
 14 COPYING AS UNDER RULE 34, ANY INSURANCE  
 15 AGREEMENT UNDER WHICH AN INSURANCE  
 16 BUSINESS MAY BE LIABLE TO SATISFY ALL OR  
 PART OF A POSSIBLE JUDGMENT IN THE ACTION  
 OR TO INDEMNIFY OR REIMBURSE FOR PAYMENTS  
 MADE TO SATISFY THE JUDGMENT.**

17 *The University of Washington and its employees, agents, and  
 18 students are covered for liabilities arising from negligent acts  
 and or omissions committed in the course and scope of their  
 19 University duties. This coverage is provided through a self-  
 funded program established pursuant to RCW 28B20.250 et  
 seq., and governed by the Standing Orders of the Board of  
 20 Regents. The liability program provides unlimited coverage,  
 operates on an occurrence basis, and applies at all approved  
 21 sites of practice or education. At Plaintiff's request, the  
 University has also produced to Plaintiff copies of the afore-  
 22 referenced Washington statute, Board of Regents Governance  
 Standing Orders, Chapter 5 (outlining RCW 28B.20.250) and  
 Executive Order No. 19 (Attorney General's Division-legal  
 23 procedures involving the University and its personnel), and  
 hereby produces copies of 2018 correspondence to individual  
 Defendants Palmer, Swenson, Saunders, and Tapper (please  
 24 note: the two versions of correspondence to Mr. Tapper  
 reflect the original correspondence that contained a mistake  
 in the salutation, and the corrected version). See,*

25 *UW004452-UW))4461, previously produced to Plaintiff on  
 26 July 12, 2018.*

1 Dkt. 108-5, pp. 12-13.

2       33. On August 23, 2018, Mr. Chen and I had a telephonic discovery conference  
 3 with Mr. Thomas regarding his emails about Defendants' responses to discovery requests.  
 4 When we called, Mr. Thomas said he only wanted to discuss "procedural issues". He said  
 5 he did not think the University had produced "documents as kept in the ordinary course of  
 6 business." I explained all of the documents located and produced, and gave examples of the  
 7 "paper trail" that had been followed to locate some of them. When I told him I was unclear  
 8 as to what more information he thought should be provided, he just said "I don't think it's a  
 9 complete representation of where the records were kept," that he did not think they were  
 10 kept properly, and told me he thought I was getting "bad information." I told him he can  
 11 argue whatever he wants, but in terms of our discovery process, I explained the process we  
 12 went through to try to locate and identify any responsive documents and that I was trying to  
 13 figure out if there was something else specific we needed to do; I invited him to let me  
 14 know if he knew something I did not, and I would try to follow up on it. Mr. Thomas said  
 15 he was not saying it was anything I or Mr. Chen had done, that it was "nothing personal"  
 16 and he thought we had done our job, but he may have to bring a motion to compel.

17       34. I asked him what relief he would be asking the court for, as I truly could not  
 18 understand what more we should or could be doing that the court would otherwise order,  
 19 and I was not hearing him identify anything we had not produced. He said his client knew  
 20 more about it than he did. When I asked if there was anything else he was asking us to  
 21 provide right then, he said no, there was nothing to do right now and the call ended.

22       35. Attached as **Ex. K** is a true and correct copy of a September 12, 2018 email  
 23 Mr. Thomas sent to my office outlining what he deemed to be insufficiencies in  
 24 Defendants' responses to Plaintiff's 2018 discovery requests. Included in the "deficiencies"  
 25 was an allegation that Defendants answers were "evasive and frankly an attack upon my  
 26 client who is the victim in this lawsuit." (p. 3). In the email, he also asserted "UW cannot  
 27 respond through other people. There needs to be a person with legal authority to respond on

1 behalf of UW.” (p. 3) (Interrog. 3). The email insisted that every current and former  
 2 employee whose name may appear on the transmittal emails was required to personally  
 3 “certify” each of the answers to discovery propounded to the University (p. 3) (Interrog. 3).  
 4 Mr. Thomas again alleged that the University had refused to provide the “location of the  
 5 documents produced,” which was essential to Ms. Dalessio’s arguments—though the email  
 6 details the locations described. (p. 3) (Interrog. 5). Mr. Thomas then stated “this is evasive  
 7 and harassment.” (p. 3) (Interrog. 5). These assertions made no sense in light of what had  
 8 been produced and explained repeatedly.

9       36. During a telephonic “discovery conference” on September 17, 2018, Mr.  
 10 Thomas repeatedly insisted that Eliza Saunders, the Director of the Office of Public  
 11 Records and Open Meetings, was not a “legal representative” who could sign discovery  
 12 responses on behalf of the University. She had signed the University’s responses to the  
 13 2018 discovery requests. I explained that an agency has to have a “corporate  
 14 representative” sign discovery and to appear on behalf of the agency. Mr. Thomas started  
 15 saying, “*Do you enjoy wasting my time?*” “*Where do you get off?*” and, “*You are not*  
 16 *working with me after I spent all this time...*” working on discovery letters. I asked Mr.  
 17 Thomas who or what he would expect to see as a corporate representative for an  
 18 organization like the University, and he said he would need to see some sort of document  
 19 from the President of the University or General Counsel proving that the person signing  
 20 discovery was a “spokesperson,” otherwise the University could “just pick anyone.” I  
 21 assured him that Ms. Saunders was authorized to sign these requests related to the OPR  
 22 office of which she was the Director, and that the University would not be allowed to take a  
 23 contrary position in the litigation.

24       37. During the September 17<sup>th</sup> conference, he also asserted, again, that the  
 25 documents produced by the University were not “produced as kept in the ordinary course of  
 26 business.” We had discussed this previously, and I *again* explained that we produced files  
 27 and documents as we understood them to be kept and as we obtained them from the

1 University of Washington. They were Bates stamped, referenced in Initial Disclosures and  
 2 discovery responses and cross-referenced there. He also said the University had not  
 3 provided an “org chart” or the requested “job descriptions” for OPR staff. I pointed out to  
 4 him, again, that the job descriptions *had* been produced on July 3, 2018 and were Bates-  
 5 numbered UW004166-UW4180. He confirmed he had received some job descriptions, he  
 6 just thinks they are not “sufficient.” I confirmed that I had sought an org chart for OPR but  
 7 was informed there was not one that these were the job descriptions the University of  
 8 Washington had.

9       38. I have also explained that Shari Spung’s only involvement in this case stems  
 10 from responding to Ms. Dalessio’s tort claim, submitted October 21, 2016, and litigation  
 11 management as the claims adjuster on this case.

12       39. As it was still truly unclear what additional or different information on  
 13 September 17<sup>th</sup> that Plaintiff was seeking that would even potentially make a difference in  
 14 the litigation, we suggested it might be more efficient to approach the issue under the  
 15 FRCP 56(f) standard once Defendants re-filed their summary judgement motion.  
 16 Particularly given the fact that all of Plaintiff’s claims related to PRA disclosure were  
 17 asserted solely against individual Defendants who are entitled to “qualified immunity”  
 18 under Federal law and statutory “good faith” immunity pursuant to RCW 42.56.060, we  
 19 pointed out that these individuals were entitled to have these motions filed and to obtain a  
 20 ruling on immunities.

21       40. At one point, Mr. Thomas agreed that this might be the most expeditious  
 22 way to deal with current discovery issues, but told us that he was on the verge of leaving  
 23 town and would be unavailable for September 20 through October 16, 2108. He said we  
 24 could not file a Summary Judgment Motion while he was gone, in that he had listed those  
 25 dates on a Joint Status Report in February. This is the third time he has taken this position  
 26 in the last six months, though he had never actually filed a Notice of Unavailability. I  
 27 suggested he should file an NOU specifying which dates he would be gone, and we would

1 hold off on re-filing the Summary Judgment Motion (which was originally filed over a year  
2 ago) until her returned to town.

3 41. Then Mr. Thomas filed this motion while he was unavailable so the noting  
4 date would appear prior to any date Defendants could note a summary judgment motion.

5 42. Mr. Thomas also served our office with a new, second set of extensive  
6 discovery requests (49 RFPs and 3 Interrogs.) on September 28, 2018, many of which were  
7 repetitive of Plaintiff's earlier discovery requests and/or sought documents that had already  
8 been produced in discovery and/or Initial Disclosures. **Exhibit J.**

9 I declare under penalty of perjury under the laws of the State of Washington that the  
10 foregoing is true and correct to the best of my knowledge.

11 DATED this 15<sup>th</sup> day of October, 2018, at Seattle, Washington.  
12

13 /s/ Jayne L. Freeman  
14 Jayne L. Freeman, WSBA #24318  
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## **CERTIFICATE OF SERVICE**

I hereby certify that on October 15, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

**Attorneys for Plaintiff**

Mr. Joseph Thomas  
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DATED: October 15, 2018

/s/ Jayne L. Freeman

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